No. 86-636

In The
Supreme Court of the United States
October Term, 1986

MARTIN COUNTY and OKEECHOBEE COUNTY, Florida,

Petitioners,

vs.

ROBERT MAKEMSON, ROBERT LEE DENNIS, *et al.*,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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QUESTIONS PRESENTED

Contrary to the Petitioners' position in this regard, the Respondents submit that the questions actually presented in the cause are as follows:

I. Whether a substantial federal question is involved in this cause;

II. Whether, even if a substantial federal question potentially exists in this cause, there is also a case or controversy specifically involving any Fifth or Sixth Amendments Rights of the Petitioners which is ripe for adjudication;

III. Whether, even if there is a substantial federal question ripe for adjudication involving actual federal rights of the Petitioners, the decisions by the Supreme Court of Florida are not obviously correct and do not involve any confict of opinion or basis for review by this Court.

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RAISING THE FEDERAL QUESTION

Contrary to the Petitioners' conclusion at page ten (10) of the petition, including footnote two (2) on that page, the basis for the holdings of the Supreme Court of Florida in *Makemson* and *Dennis* was that Florida Statute 925.036 (1981) was invalid as applied under Article V, Section 1, and Article II, Section 3 of the Florida Constitution and the inherent power of Florida Trial Courts in unusual and extraordinary cases to depart from the state's fee guidelines set forth in Florida Statute 925.036 (See Appendix, pp. 6, 12, 13-14).

SUMMARY OF ARGUMENT

The Petitioners seek review by certiorari of a ruling in *Makemson* and *Dennis* by the Supreme Court of Florida that in extraordinary and unusual cases it is within the inherent power of Florida Trial Courts to allow departure from the state's statutory fee guidelines prescribing the fees which a private attorney who has been appointed as a special public defender may be paid for defending an indigent accused when the private attorney is under compensated in an amount which is confiscatory of his or her time, energy, and talents (See Appendix, p. 12). Contrary to the Petitioners' contentions that this ruling was based upon a construction by the State Court of the Fifth and Sixth Amendments to the United States Constitution and thus raises a federal question, in arriving at this decision, the Florida Supreme Court actually held that the statute in

question was unconstitutional as applied to the *Makemson* and *Dennis* facts and circumstances because it violated Article V, Section 1, and Article II, Section 3, of the Florida Constitution (See Appendix p. 6). Thus, no federal question was raised.

Even if a federal question had indeed been raised, no Fifth or Sixth Amendment Rights of the Petitioner counties have been impacted; there exists no case or controversy involving the rights of these petitioner segments of the State of Florida which is ripe for adjudication; the Petitioner lack standing to raise the alleged federal questions; and the basic Complaint of the Petitioners is that this ruling by the supreme judicial branch of the state will have an adverse impact on the Petitioners' budgets.

Even if there exists a federal question and it is ripe for decision as to the rights of these Petitioners, the decision below is obviously correct in that it invalidates rather than upholds the state statute and grants criminal defendants in Florida who find themselves in the *Makemson-Dennis* situation, greater rights than some other state and federal courts might do or have done.

ARGUMENT

The Respondents oppose the Petition for writ of Certiorari upon three grounds:

I. THAT NO SUBSTANTIAL FEDERAL QUESTION IS INVOLVED IN THIS CASE.

The Supreme Court of the State of Florida ruled below in *Makemson* and *Dennis* that Florida Statute

925.036 (1981) was unconstitutional as applied to the extraordinary circumstances which confronted the Judge and the Respondent attorneys in the Florida Trial Court. This Statute by its terms purports to place a cap of $2,500.00 upon the fee that a private attorney who has been appointed as a special public defender upon disqualification of a public defender's office can receive for his services in a non-capital felony case, regardless of the vissicitudes involved in the defense of the case or of the number of counts charged, and $3,500.00 for the trial defense of a capital case.

In holding that this statute was invalid as applied, the Supreme Court of Florida did indeed refer to the Sixth Amendment to the Constitution of the United States as the Petitioners contend; however, in reaching its actual decision in *Makemson* (as adopted in *Dennis*), the Florida Supreme Court precisely held with respect to the constitutionality of this Florida Statute that:

> "Although facially valid, we find the statute unconstitutional when applied in such a manner as to curtail the Court's inherent power to insure the adequate representation of the criminally accused. At that point, the statute loses its usefulness as a guide to trial judges in calculating compensation and becomes an oppressive limitation. As so interpreted, therefore, the statute impermissibly encroaches upon a sentitive area of judicial concern, and therefore, violates Article V, Section 1, and Article II, Section 3 of the Florida Constitution . . ." (See Appendix p. 6).

And:

> "... it is within the inherent power of Florida's trial courts to allow, in extraordinary and unusual cases, departure from the state's fee guidelines when necessary in order to insure that an attorney who has served the public by defending an accused is not compensated in an amount which is confiscatory of his or her time, energy and talents. More precise delineation, we believe is not necessary. Trial and Appellate judges, well aware of the complexity of a given case and the attorney's effectiveness therein know best those instances in which justice requires departure from statutory guidelines ..." (See Appendix, p. 12)

Consequently, there exists no federal question to be reviewed by this Honorable Court, inasmuch as the Florida Supreme Court by its opinion: decided *against* the validity of Florida Statute 925.036 (1981) as applied; removed any possible repugnancy between that facially valid state statute and the United States Constitution; construed and interpreted that state statute in terms of its application to the factual trial court contexts actually existing in *Makemson* and *Dennis;* and, based its ultimate decision upon the Constitution and law of the State of Florida rather than upon the Federal Constitution or laws.

II. EVEN IF A SUBSTANTIAL FEDERAL QUESTION DID EXIST IN THIS CAUSE, THERE IS NO CASE OR CONTROVERSY RIPE FOR ADJUDICATION BY THIS COURT IN WHICH ANY RIGHTS OF THE PETITIONER COUNTIES ARE INVOLVED.

It is difficult for the Respondents to understand just whose Sixth Amendment or other federal rights the Petitioners allege to have been violated by the ruling of the

Supreme Court of Florida in *Makemson* and *Dennis*, especially since the State of Florida itself has not been named as a Party to this action. The Petitioner Counties are but political segments of the State of Florida and as such have no Sixth Amendment rights to counsel. These Counties were not criminal defendants in the state trial court (See Appendix, pp. 1-13, 14-15), and they were not defended by the Respondents (See Appendix, pp. 1-13, 14-15). Nor, have the Respondents themselves ever claimed that their Fifth or Sixth Amendment rights have been violated in this cause. (See Appendix, pp. 1-13, 14-15). As a consequence, the Respondents submit that since no Sixth Amendment or other federal rights of the Petitioners have been impacted by the ruling of the Supreme Court of Florida in *Makemson* and *Dennis* there exists no case or controversy ripe for adjudication by this Court; that the Petitioners lack standing to seek a review by certiorari; and, that the Petitioners seek review by certiorari of what is basically only a budgetary complaint by the Petitioners against the judicial branch of the State of Florida under the guise of Fifth and Sixth Amendment claims (i.e., the State is in effect suing different parts of itself by way of this Petition and on alleged federal grounds).

III. EVEN IF A SUBSTANTIAL FEDERAL QUESTION IS RIPE FOR ADJUDICATION IN THIS CASE AND THE PETITIONER COUNTIES HAVE STANDING TO RAISE IT, THE RULINGS OF THE SUPREME COURT OF FLORIDA ARE OBVIOUSLY CORRECT AND INVOLVE NO CONFLICT OF OPINION OR BASIS FOR REVIEW BY THIS COURT.

Even had the Supreme Court of the State of Florida based its holdings in *Makemson* and *Dennis* wholly on the Fifth or Sixth Amendments to the Constitution of the United States, and even if the Petitioner Counties' Fifth or Sixth Amendment rights had somehow been impacted by these rulings, it is obvious nonetheless that these rulings of the Supreme Court of Florida have the net effect of granting criminal defendants as a class in the State of Florida greater, not lesser, protection than Florida Statute 925.036 (1981) would have accorded them by its terms or which other courts might have held or hold the Fifth or Sixth Amendments to require. Therefore, in holding Florida Statute 925.036 (1981) invalid as applied to the facts and circumstances of *Makemson* and *Dennis,* the Supreme Court of Florida was obviously Correct under both Federal and State standards.

———o———

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari filed by the Petitioners Martin County, Florida, and Okeechobee County, Florida, *et al.*, should be denied.

Respectfully submitted,

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